

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1360

In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

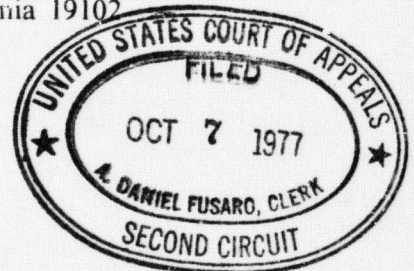
vs.

IVAN GOLDMAN and RUDY LEWIS,
Defendants-Appellants.

*Appeal from Judgment of Conviction, United States District
Court for the Southern District of New York at Criminal
Number 77-97.*

**APPENDIX FOR APPELLANT
RUDY LEWIS**

VICTOR L. SCHWARTZ
Attorney for Appellant
1521 Locust Street
Philadelphia, Pennsylvania 19102
(215) 735-2551



PAGINATION AS IN ORIGINAL COPY

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LEWIS, RUDY la

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77

0097

02

(LAST FIRST MIDDLE)

JUVENILE

02

Yr. 02

U.S. DISTRICT COURT

OFFENSES CHARGED

ORIGINAL COUNTS

U.S. MAG. CASE NO. 77-24

BAIL - RELEASE

18:371

Consp. to transport stolen goods in interstate commerce

1

18:2314

Transportation of stolen goods in interstate commerce

6-10

18:371

Consp. to transport stolen goods in interstate commerce

18:2314

Transportation of stolen goods in interstate commerce

6-8

II. KEY DATES & INTERVALS

ARREST or

INDICTMENT

ARRAIGNMENT

U.S. Custody Began
1/1/77

High Risk Date

Information ☐
2-14-77

2-24-77

Trial Set For

Conditions Served

Indict. Waived ☐Superseding ☒ Indict/Info ☐

1st Plea

☒ NG ☐ G ☐ NOL

Trial Began

First Appearance

In Charging District

5-16-77

2-24-77

☐ NG ☐ G ☐ NOL

5-13-77

Trial Ended

5-24-77

Disposition of Charge

5-28-77

☐ Convicted☐ Acquitted☐ Dismissed☐ On Government's Motion

SENTENCE

2-23-77

☐ On All Charges☐ On Lesser Offense(s)☐ WOP: ☐ WOP☐ On Government's Motion

MAGISTRATE

DATE

INITIAL NO.

INITIAL APPEARANCE DATE 1/7/77

1/27/77

LB-08AH

1/6/77

LB-08AH

1/6/77

LB-08AH

18 USC 2314 and 2 - TRANSPORTATION OF STOLEN PROPERTY IN INTERSTATE COMMERCE

Nathaniel H. Akerman
791-1957JOEL WINOGRAD
950 3rd ave
N.Y.C. 10022
Howard Steller
205 West 34th St., N.Y.C. 10001
695-2000

GOLDMAN -01

- 1/6/77 - Complaint filed,
- 1/7/77 - Defendant presented, represented by Howard Staller, 20t W. 34th St., N.Y. Defendant released on bail, address: 1580 Amsterdam Ave. New York, N.Y.
- 2/14/77 - Indictment filed, 77 Cr.97.....Tenney, J.
- 2-24-77 - Deft. (atty. Joel Winograd present) pleads not guilty. Bail \$5,000 PRB continued. Case assigned to Goettel, J. for all purposes.....Frankel, J.
- 2-25-77 - Fld the following papers rec'd from Mag Bernikow (Mag #77-24) Complaint-dispositoin sheet-Mag warrant of arrestex. 1-7-77 notice of appearance of atty Haward Steller as atty for deaft appearance bond in the amount of \$5,000 Non/Surety.dated 1-7-77
- 3-1-77 - Fld notice of appearance of Joel Winograd as atty for deaft
- 4-28-77 - Atty present for pre-trial conference held. Date of trial 5-19-77...GOETTEL, J.

-over-

- 5-16-77 Filed Superseding Indictment & referred to Goettel, J.
.....Stewart, J.
- 5-18-77 Court DISMISSES original indictment....GOETTEL J,
- 5-18-77 Court dismisses & proceeds with (S) ind. DEft & atty Joel Winograd present. DEft enters a N/G plea to (S) ind. & deft proceeds to trial..Jury trial begun.....GOETTEL, J.
- 5-19-77 Jury trial continues Motion of deft's counsel to dismiss Count 1 GRANTED . Count 2 of this (S) is dismissed by the Court. Court requests another copy of ind. be submitted to the Jurors eliminating the 1 & 2 counts of the ind. & re-numbering the Counts to read 2,3,4,5,6,7, & 8 of (S) indictment.....GOETTEL, J.
- 5-20-77 Trial continued & concluded--Jury panel begin their deliberations,,GOETTEL, J.
- 5-23-77 Jurors continue deliberating- Jury panel reached a verdict & find the deft GUILTY as charged on re-typed & re-numbered counts of indictment , Counts 5,6,7, & 8. Prec-sentence inv. orderd. Date of sentence 7-19-77 at 9:30 A.M. Bail is continued at \$5,000 P.R.B.GOETTEL, J.
- 7-28-77 Filed JUDGMENT & COMMITMENT DEft (atty Joel Winograd present)
The deft is hereby committed to the custody of the Atty General or his authorized representative for imprisonment for a period of ONE (1) YEAR on each of counts 5,6,7, & 8 to run concurrentlyGOETTEL, J. Copies issued (ent 7-29-77)
- 8-5-77 Filed notice of appeal from the judgment of conviction & intermediary orders entered on the 28th day of July 1977) copy mailed to deft's & U.S. Atty)

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By *[Signature]*
Deputy Clerk

{ A true copy,

R. Daniel Jones

Clerk

3a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v -

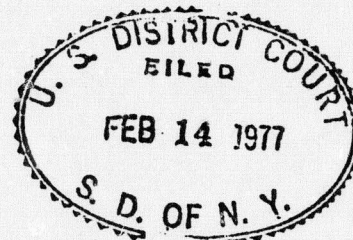
IVAN GOLDMAN, and
RUDY LEWIS,

Defendants.

77 CRIM. 0097

INDICTMENT

77 Cr.



INTRODUCTION

The Grand Jury charges:

1. At all times relevant to this Indictment Guilford Mills, Inc. was incorporated and headquartered in Greensboro, North Carolina and was a producer of cloth fabric. Guilford Mills, Inc. had sales offices at 180 Madison Avenue, New York, New York operating under the names "Fashion III" and "Free Association Fabrics."
2. From on or about August 26, 1974 to on or about June 6, 1975, defendant IVAN GOLDMAN, was employed by Guilford Mills, Inc. at 180 Madison Avenue, New York, New York.
3. From on or about April 23, 1973 to on or about February 6, 1976, defendant RUDY LEWIS, was employed by Guilford Mills, Inc. at 180 Madison Avenue, New York, New York.
4. At all times relevant to this Indictment Cranston Print Works Inc. of Fletcher, North Carolina was an independent company contracted by Guilford Mills, Inc. to process the cloth fabric manufactured and owned by Guilford Mills, Inc. After the cloth fabric was processed, Guilford Mills, Inc. would direct Cranston Print Works, Inc. to ship the cloth fabric directly to Guilford's customers.

5. At all times relevant to this Indictment, Bayer Eisenburg Textile Corporation, 54 White Street, New York, New York was a buyer of cloth fabric goods.

6. At all times relevant to this Indictment, Michael Cohen was an independent broker who arranged for the sale of cloth fabric goods from the manufacturer to the buyer.

7. Each and every allegation of this Introduction is hereby repeated, realleged and incorporated by reference in Counts One through Ten as though fully set forth therein.

COUNT ONE

The Grand Jury further charges:

8. From on or about the 1st day of January, 1975, up to and including the date of the filing of this Indictment, in the Southern District of New York, IVAN GOLDMAN and RUDY LEWIS, the defendants, unlawfully, wilfully, and knowingly did combine, conspire and agree together with each other and with other persons, to the Grand Jury known and unknown, to commit certain offenses against the United States, to wit, to violate Title 18, United States Code, Section 2314.

9. It was a part of said conspiracy that the defendants would unlawfully, wilfully and knowingly cause to be transported in interstate commerce from Cranston Print Works, Inc. Fletcher, North Carolina to Bayer Eisenberg Textile Corporation, 54 White Street, New York, New York goods and merchandise of a value exceeding \$5,000, to wit cloth fabric material, knowing the same to have been stolen, converted and taken by fraud.

10. In furtherance of the conspiracy and to effect its objects, the following overt acts were committed in the Southern District of New York:

OVERT ACTS

1-1214

(1.) Prior to March 7, 1975, defendant IVAN GOLDMAN met with Michael Cohen and requested him to find a buyer for cloth fabric material.

(2.) On or about March 7, 1975, defendant IVAN GOLDMAN caused approximately 7,503 yards of cloth fabric material to be shipped from Cranston Print Works, Inc. to the Bayer Eisenberg Textile Corporation.

(3.) On or about April 8, 1975, defendant IVAN GOLDMAN received approximately \$1500 in cash from Michael Cohen.

(4.) Prior to April 16, 1975, defendant IVAN GOLDMAN met with Michael Cohen and requested him to find a buyer for cloth fabric material.

(5.) On or about April 16, 1975, defendant IVAN GOLDMAN caused approximately 9,872 yards of cloth fabric material to be shipped from Cranston Print Works, Inc. to Bayer Eisenberg Textile Corporation.

(6.) On or about April 17, 1975, defendant IVAN GOLDMAN received approximately \$2,000 in cash from Michael Cohen.

(7.) Prior to April 25, 1975, defendant IVAN GOLDMAN met with Michael Cohen and requested him to find a buyer for cloth fabric material.

(8.) On or about April 25, 1975, defendant IVAN GOLDMAN, caused approximately 9,151 yards of cloth fabric material to be shipped from Cranston Print Works, Inc. to Bayer Eisenberg Textile Corporation.

(9.) On or about May 2, 1975, defendant IVAN GOLDMAN received approximately \$2,000 in cash from Michael Cohen.

(10.) Prior to May 27, 1975, defendant IVAN GOLDMAN met with Michael Cohen and requested him to find a buyer for cloth fabric material.

(11.) On or about May 27, 1975, defendant IVAN GOLDMAN, caused approximately 8,977 yards of cloth fabric to be shipped from Cranston Print Works, Inc. to Bayer Eisenberg Textile Corporation.

(12.) On or about June 3, 1975, defendant IVAN GOLDMAN received approximately \$1,800 in cash from Michael Cohen.

(13.) Prior to August 4, 1975, defendant RUDY LEWIS, met with Michael Cohen and requested him to find a buyer for cloth fabric material.

(14.) On or about August 4, 1975, defendant RUDY LEWIS caused approximately 13,705 yards of cloth fabric material to be shipped from Cranston Print Works, Inc. to Bayer Eisenberg Textile Corporation.

(15.) On or about August 8, 1975, defendant RUDY LEWIS, received approximately \$3,700 in cash from Michael Cohen.

(16.) Prior to September 23, 1975, defendant RUDY LEWIS met with Michael Cohen and requested him to find a buyer for cloth fabric material.

(17.) On or about September 23, 1975, defendant RUDY LEWIS caused approximately 16,902 yards of cloth fabric material to be shipped from Cranston Print Works, Inc. to Bayer Eisenberg Textile Corporation.

(18.) On or about October 2, 1975, defendant RUDY LEWIS, received approximately \$5,400 in cash from Michael Cohen.

(19.) Prior to September 25, 1975, defendant RUDY LEWIS, met with Michael Cohen and requested him to find a buyer for cloth fabric material.

(20.) On or about September 25, 1975, defendant RUDY LEWIS, received approximately \$1,300 in cash from Michael Cohen.

(21.) On or about October 29, 1975, defendant RUDY LEWIS, caused approximately 9,763 yards of cloth fabric material to be shipped from Cranston Print Works, Inc. to Bayer Eisenberg Textile Corporation.

(22.) Prior to December 5, 1975, defendant RUDY LEWIS, met with Michael Cohen and requested him to find a buyer for cloth fabric material.

(23.) On or about December 5, 1975, defendant RUDY LEWIS caused approximately 16,198 yards of cloth fabric material to be shipped from Cranston Print Works, Inc. to Bayer Eisenberg Textile Corporation.

(24.) On or about December 11, 1975, defendant RUDY LEWIS, received approximately \$5,000 in cash from Michael Cohen.

(25.) Prior to February 17, 1976, defendant RUDY LEWIS, met with Michael Cohen and requested him to find a buyer for cloth fabric material.

(26.) On or about February 17, 1976, defendant RUDY LEWIS, caused approximately 12,897 yards of cloth fabric material to be shipped from Cranston Print Works, Inc. to Bayer Eisenberg Textile Corporation.

(27.) On or about March 10, 1976, defendant RUDY LEWIS, received approximately \$6,400 in cash from Michael Cohen.

COUNTS TWO THROUGH FIVE

The Grand Jury further charges:

11. On or about the dates hereinafter set forth below in the Southern District of New York IVAN GOLDMAN, the defendant, did unlawfully, wilfully and knowingly transport

and cause to be transported in interstate commerce from Cranston Print Works, Inc., Fletcher, North Carolina to Bayer Eisenberg Textile Corporation, New York, New York, goods, wares and merchandise of a value exceeding \$5,000, to wit, fabric material of the approximate retail value hereinafter set forth below, knowing the same to have been stolen, converted and taken by fraud:

<u>COUNT</u>	<u>DATE</u>	<u>APPROXIMATE RETAIL VALUE</u>
Two	March 7, 1975	\$5,627
Three	April 16, 1975	\$7,404
Four	April 25, 1975	\$6,862
Five	May 27, 1975	\$6,732

(Title 18, United States Code, Section 2314.)

COUNTS SIX THROUGH TEN

The Grand Jury further charges:

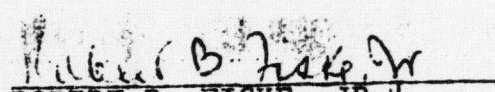
12. On or about the dates hereinafter set forth below in the Southern District of New York, RUDY LEWIS, the defendant, did unlawfully, wilfully and knowingly transport and cause to be transported in interstate commerce from Cranston Print Works, Inc., Fletcher, North Carolina, to Bayer Eisenberg Textile Corporation, New York, New York, goods wares and merchandise of a value exceeding \$5,000, to wit, fabric material of the approximate retail value hereinafter set forth below, knowing the same to have been stolen, converted and taken by fraud:

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<u>COUNT</u>	<u>DATE</u>	<u>APPROXIMATE RETAIL VALUE</u>
Six	August 4, 1975	\$10,278
Seven	September 20, 1975	\$7,322
Eight	September 23, 1975	\$12,676
Nine	December 5, 1975	\$12,148
Ten	February 17, 1976	\$9,672

(Title 18, United States Code, Section 2314.)


FOREMAN
ROBERT B. FISKE, JR.
United States Attorney

{ A true copy,

R. Daniel Insaro

Clerk

77 CRIM. 0097

Form No. USA-33a-274 (Ed. 9-25-68)

United States District Court
SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

IVAN GOLDMAN and RUDY LEWIS,

Defendants.

INDICTMENT

Title 18, United States Code,
Sections 371 and 2384.

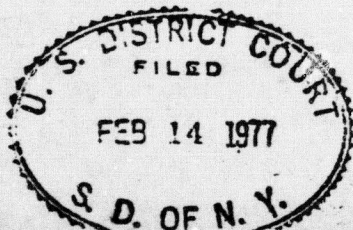
ROBERT B. FISKE, JR.

United States Attorney.

A TRUE BILL

Emil H. Breyer

Foreman.



JUDGE GONZALEZ
February 14, 1977 - filed Indictment.

January 24 1977 - Det. Ivan Goldman
pleads not guilty. (Atty. Michael J. Kunstler)
Det. Rudy Lewis (Atty. Joel Virograd)
pleads not guilty. Bail \$500. P.B. Continued.
Gonzalez, J. for all
purposes.

APR 23 1977

Each attorney's present for the Trial
& Conference held Date of Trial 5/19/77
Gonzalez, J.

May 18, 1977 Court dismisses original
Indictment.

Gonzalez, J.

108
J. F. [Signature]

1 rg/lf/189

Rudy Lewis-Direct

2 Michael Cohen in any way, shape or form or otherwise.

3 Q Did you ever receive any monies from Michael Cohen,
4 in cash, check or any other type of payment?

5 A I have never received anything from Mr. Michael
6 Cohen, whether it was a check or money.

7 Q Did you hear his testimony in court here where he
8 indicated that he gave you envelopes with money in it?

9 A Yes, I did.

10 Q Was that true?

11 A That was not true.

12 Q Mr. Lewis, I ask you to give me the name of this
13 man David. Do you know his second name?

14 A David, I don't know his name because I have been
15 out of Guilford now for at least two years.

16 Q What was his function at that company?

17 A His function was a salesman. He sold retail and he
18 also sold wholesale.

19 Q That's David?

20 A Yes.

21 Q What about Howard Cohen?

22 A Howie Cohen was a sales representative of Hull Dye,
23 which go around to solicit patterns or work for his company.

24 Q Did he ever solicit work from Guilford Mills, Inc.?

25 A Yes, he did.

1 rz/lf/276

2 itself to your belief or which you may find
3 corroborated by other evidence in the case.

4 In appraising the credibility of all witnesses
5 you take into account the interest of the witness, the motives
6 and other factors that may reasonably be considered as
7 influencing or coloring that person's testimony. The fact
8 that a person is interested, however, does not necessarily
9 mean that his testimony is not true. It is merely one
10 factor that you have to consider in evaluating the testimony,
11 because you as the jurors are the sole judge of the
12 credibility of the witnesses and the weight their testimony
13 deserves.

14 The law permits, but does not require a defendant
15 to take the stand in his own behalf. In this case, the
16 defendant Rudy Lewis took the stand. Obviously, the defen-
17 dant has a deep personal interest in the result of this prose-
18 cution. Indeed, it is fair to say that a defendant has the
19 greater stake in the outcome of the trial. Interest, as
20 you know, creates a motive for false testifying. The greater
21 the interest, the stronger the motive, and a defendant's
22 interest in the result of a trial is of a character possessed
23 by no other witness.

24 In appraising that defendant's credibility, you
25 may take his interest in the outcome into consideration.

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1 rg/lf/277

2 However, it by no means follows that simply because a
3 person has a vital interest in the end result that he is not
4 capable of telling a truthful and straightforward story. It
5 is for you to decide to what extent, if at all, his interest
6 has colored his testimony.

7 You have also heard the testimony of Michael Cohen.
8 You are entitled to give that testimony such weight as you
9 may believe it deserves. In considering this, you may take
10 into account whether Mr. Cohen had any motive or interest
11 to testify as he did. If you find that Mr. Cohen was himself
12 involved in a criminal enterprise with any person, then you
13 may consider this involvement in assessing whether or not
14 Mr. Cohen had a motive to lie when he implicated the defendants
15 Goldman or Lewis.

16 You should carefully scrutinize all the testimony
17 given, the circumstances under which each witness has testi-
18 fied, and every matter in evidence which tends to show whether
19 a witness is worthy of belief. Consider each witness'
20 intelligence, motive and state of mind and demeanor while on
21 the stand. Consider the witness' ability to observe the
22 matters as to which he has testified and whether he or she
23 impresses you as having an accurate recollection, to the
24 extent to which, if at all, each witness' testimony is
25 supported or contradicted by other evidence, including the docu-

Ja

1 rg/lf/280

2 beyond a reasonable doubt that the defendants are guilty of
3 crime charged in the indictment.

4 Under your oaths as jurors, you are not to be
5 swayed by sympathy. You are to be guided solely by the evi-
6 dence in the case, and the crucial question that you must
7 ask yourself as you sift through this evidence is: where do
8 you find the truth? A trial is not a battle of witnesses.
9 The only triumph in any case, whether it be civil or criminal,
10 is whether the truth has triumphed. If it has, then justice
11 has been done. You are to determine the guilt or innocence
12 of the defendant's solely on the basis of the evidence and --
13 the law as I have charged you. If you have a reasonable doubt
14 as to the defendant's guilt, you should not hesitate for any
15 reason to find a verdict of acquittal; but on the other hand,
16 if you should find that the government has met its responsi-
17 bility of proving the defendants guilty beyond a reasonable
18 doubt, you should not hesitate because of sympathy or any
19 other reason to return a verdict of guilty.

20 I have just given you a rather lengthy charge and
21 it may sound a little bit confusing to you; but in reality
22 this is a very simple case. [The evidence established that
23 goods were sent from Guilford Mills to a processor, Cranston
24 Print Works in Fletcher, North Carolina. The evidence
25 established that thereafter the goods were released and sent

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1 rg/lf/281

2 to a wholesaler in New York by the name of Bayer-Eisenberg.
3 The evidence also established that Guilford Mills never
4 got paid for these shipments. The issue is whether Ivan
5 Goldman and Rudy Lewis took money from Michael Cohen in pay-
6 ment for fabric belonging to Guilford Mills and intercepted
7 the bills of lading at the New York office so that Guilford
8 would not know that Bayer Eisenberg owed it for these
9 particular goods.

10 Your function is to weigh the evidence in the case
11 and to determine the guilt or innocence of the defendants
12 solely on the basis of the evidence and these instructions.
13 Your verdict must be unanimous. All must agree. Under your
14 oaths as jurors, you cannot allow considerations of the punish-
15 ment which may be inflicted by the defendants if they are
16 convicted to influence your verdict. The duty of imposing
17 sentence in the event of conviction is solely my responsibility.

18 Now, each juror is entitled to his own opinion,
19 but what you are required to do is to go into the jury room
20 and exchange views with one another, review the evidence,
21 listen to the arguments of your fellow jurors, present your
22 own views, consult with one another and reach an agreement
23 solely and only upon the evidence, and in accordance with
24 the instructions on the law that I have given you.

25 If you should have a point of view that differs from

5a

2 THE COURT: You are a little late, we have already
3 done it.

4 MR. HYMAN: I thought I had objected to it previously.

5 THE COURT: Not that I recall, so it's going to
6 have to go in as it is. Are the figures correct?

7 MR. HYMAN: Yes, your Honor. Yes, your Honor's
8 figures are correct.

9 THE COURT: All right, Mary, you can send the
10 indictment in.

11 (10:25 p.m.)

12 (In open court - jury not present)

13 THE COURT: Gentlemen, it is going on 10:30. As
14 you know, we haven't heard from the jury in almost seven
15 hours. We had one early request for some exhibits and that
16 was all. Under the circumstances I propose to call them in
17 to say that unless they believe that they might be able to
18 reach a verdict with a little more deliberation, that I
19 would send them home for the evening and bring them back
20 Monday. However, I am willing to hear you on the point.

21 MR. WINOGRAD: I have no objection to that procedure,
22 your Honor.

23 MR. AKERMAN: It sounds fine to me.

24 MR. HYMAN: Yes.

25 (Jury present)

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2 THE COURT: Ladies and gentlemen, it's quite late
3 in the evening and you have had a long day. Unless you
4 feel that with a short period of further deliberations you
5 might reach a verdict, I would suggest that the wise thing
6 to do would be to put you all in limousines, send you home
7 for the evening and have you come back Monday morning. If
8 you wish, you can go back and discuss what you want to do.
9 If you feel that you know what you want to do, you can tell
10 me now.

11 Madam Foreman, do you want to take your jury back
12 and discuss it with them?

13 MADAM FORELADY: Okay, please.

14 THE COURT: Take them back to the jury room.
15 If you want a short period of longer deliberations, you
16 can have it; otherwise, you can all go home for the evening
17 and come back on Monday.

18 (At 10:27 p.m. the jury returned to the jury room.)

19 (Note received at 10:35 p.m.)

20 THE COURT: I have a note from the jury that reads
21 as follows:

22 "Your Honor, we, the jury, have been unable to
23 reach a decision and we have agreed that it is unlikely we
24 will be able to even with further deliberation. Thank you."

25 MR. AKERMAN: I think in this particular case, your

7a

1 rg/lf/299

2 Honor, we ought to send them home and give them the Allen
3 charge Monday.

4 THE COURT: Mr. Hyman?

5 MR. HYMAN: Your Honor, based upon the evidence in
6 this case, the short duration of the trial and the late hour
7 and the long time that this jury is deliberating, I would at
8 this time move for a mistrial on behalf of the defendant
9 Goldman. I believe that this jury has indicated it is hung
10 and I don't believe a further charge from this Court will
11 make much difference. We have a very intelligent jury and
12 they obviously are deeply divided and further deliberation
13 will not help. Based upon that, your Honor, I would ask for
14 a hung jury.

15 MR. AKERMAN: Your Honor, in this particular case
16 it would mean that the government would have to try this
17 over again. I think it would be worth having them come back
18 Monday and giving them the Allen charge and at least if they
19 are hung at that point the government can more intelligently
20 make a decision to go ahead and try this again or not.

21 THE COURT: What is the defendant Lewis' position?

22 MR. WINOGRAD: My position is similar to that of
23 Mr. Hyman, and that is as a result of the two days of evidence
24 we took in this case and the almost eight hours of deliberation
25 the jury has had, that any further deliberation would really

1 rg/lf/300

2 serve no useful purpose in light of the note that the jury
3 just sent to your Honor. I would ask your Honor, if
4 your Honor intends to give an Allen charge, to do it tonight
5 and not to bring them back Monday morning.

6 THE COURT: It is too late for an Allen charge
7 now, it is a quarter of eleven. It would be cruel and
8 unusual punishment to give them an Allen charge and send
9 them back and deliberate some more.

10 MR. AKERMAN: Your Honor, I think under the circum-
11 stances if there was a mistrial declared at this point, the
12 government would definitely go ahead and try this case again...
13 If there was an Allen charge and there was further delibera-
14 tion, there might be other consideration; but I think under
15 those circumstances I probably would have no choice.

16 MR. HYMAN: I find that position by the government
17 somewhat perplexing, your Honor. Whether or not this jury
18 is to be hammered with an Allen charge is irrelevant to whether
19 or not further deliberation will do any good in this case.

20 THE COURT: It's not really the government's decision
21 at this point, it's mine.

22 Bring the jury back.

23 MR. AKERMAN: Your Honor, one suggestion I might
24 make is since this jury has not sent in any notes or asked
25 for any testimony to be reread, that an Allen charge in this

1 rg/lf/301

2 particular case would probably serve some purpose if you
3 would explain to them again that they would have the right
4 and work that in with the Allen charge. I know one day
5 certainly is not an unusual amount of time for a jury in
6 this courthouse to be out deliberating.

7 (Jury present)

8 THE COURT: Ladies and gentlemen, I have your note
9 and I have read it and I have read it to counsel. I am
10 sure that this is how you feel now, and this may be how you
11 will feel later, but this case is important to both
12 parties. A lot of time and effort has gone into it, so I
13 want to have you back Monday morning to see if we can't make
14 a little progress. At that time I will give you an additional
15 charge and discuss the case with you a little bit further and
16 we'll give it one more attempt to see if we can't reach a
17 verdict.

18 I want you to go home and not think about the case
19 at all. I particularly don't want you to talk about the case.
20 Don't go home and talk with your family or friends about it,
21 you will just be looking for people to agree with your point
22 of view, and they haven't heard the evidence and they don't
23 know anything about the case. The best thing you could do is
24 go home, enjoy your weekend, forget about the case. Come
25 back in here Monday morning and I think we will start a little

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scattel

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21a

1 rg/lf/303

2 UNITED STATES OF AMERICA

3 vs.

77 Cr. 97

4 IVAN GOLDMAN
5 RUDY LEWIS

6 May 23, 1977
9:40 a.m.

7 (Trial resumed)

8 (In open court - jury present)

9 THE COURT: Good morning, ladies and gentlemen.

10 The record will reflect that all jurors are present
11 and the defendants are present.

12 I told you Friday night when I received your note
13 that I would give you a further charge this morning and I
14 will do that at this time.

15 While undoubtedly the verdict of a jury should
16 represent the opinion of each juror, it by no means follows
17 that opinions may not be changed by conference in the jury
18 room.

19 The very object of the jury system is to secure
20 unanimity by a comparison of views and by arguments among
21 the jurors themselves. It certainly is not the law that each
22 juror should not listen with deference to arguments and
23 with a distrust of his own views, his own judgment if he
24 finds a large majority of the jury taking a different view
25 of the case from what he does himself.

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2 A juror should not go into the jury room with a
3 blind determination that the verdict shall represent his
4 opinion of the case at that moment or that he should close
5 his ears to the arguments of men and women who are equally
6 honest and equally intelligent as himself.

7 Remember, at all times that no juror is expected
8 to yield the conscientious conviction he or she may have as
9 to the weight or effect of the evidence, but remember, also,
10 that after a full deliberation and consideration of all the
11 evidence, it is your duty to agree upon the verdict if you
12 can do so without violating your individual judgment and
13 conscience.

14 The considerable costs in money and time to both
15 sides if a retrial is necessary suggests that if it is possible
16 for you jurors to reach a unanimous verdict without any juror
17 yielding a conscientious conviction you should do so. Our
18 law requires a retrial unless the jury is unanimous and there
19 is no reason to suppose that any other jury is going to be
20 of better quality and decide it differently from you.

21 You may conduct your deliberations as you choose.
22 but I suggest that you now carefully re-examine and reconsider
23 all the evidence in the case bearing upon the questions be-
24 fore you. If you need any of the testimony read back to
25 you, you need only indicate what portion it is and we will

rkrf

8

Moreover, as I indicated with respect to Mr. Goldman, I do not believe the entire story of this crime has been brought out. I had the strongest feeling there were other people involved in this, that while it might not lessen the culpability of the crime, it certainly would share the responsibility and diminish the amount of money involved so far as each defendant is concerned, but I can't substitute my suspicions for what happened here for the evidence that was presented to me.

Consequently, I feel constrained to sentence the defendant to one year imprisonment on each of the counts on which he was convicted, the terms to run concurrently.

You have, of course, the appropriate period of time to move to reduce sentence and if during that additional facts are brought out mitigating responsibility, I will certainly consider them.

MR. WINOGRAD: Your Honor, I understand that is the same type of sentence that Mr. Goldman got.

THE COURT: Yes. I should tell you I considered Goldman versus Lewis to see if there are any differences and there are two differences I can see. Lewis was responsible for the first series of offenses and when he left -- I am sorry, I have it backwards. Goldman was responsible for the first series of offenses and when he

COURT OF APPEALS
STATE OF
SECOND CIRCUIT

UNITED STATES OF AMERICA,,

Plaintiff-Appellee,

- against -

DWAN GOLDMAN & RUDY LEWIS,

Defendants-Appellants.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF

ss.:

I, James A. Steele being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at 112 West 136th Street; New York, New York
That on the 7th day of October, 1977 at 1 St Andrews Plaza
New York, N.Y.

deponent served the annexed

Appendix

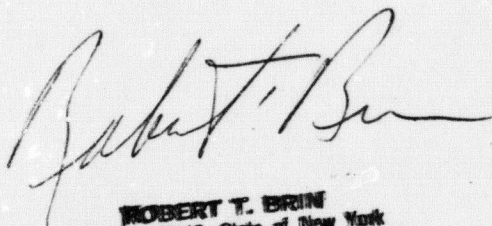
Brief

upon

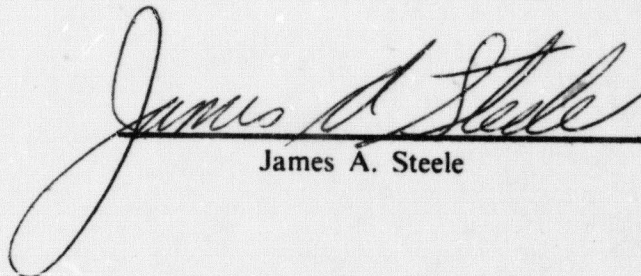
U.S. Attorney for Southern District
Robert B. Fiske, Jr.

the in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the herein,

Sworn to before me, this 7th
day of October, 1977



ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1979



James A. Steele